that the accused inflicted such grievous hurt with a length of iron piping which, if used as a weapon of offence (as it undoubtedly was), clearly is an instrument likely to cause death.

After going through the record, to my mind all that is doubtful is how the Magistrate arrived at the rest of his conclusion. I do not consider it necessary here to review the evidence on record, but in my view there are ample evidence from trustworthy witnesses (1) that the origin and cause of the fight between the complainant and the accused in the course of which the complainant sustained his injuries was the accused's sudden, premeditated and unprovoked attack upon the complainant with the iron piping; and (2) that the complainant, if he in fact drew his penknife in the course of the fight, as to which, it will be noted, he was not asked any questions by the accused in cross-examination, drew it only after the accused, together with some other persons who had joined in to help him, had attacked and injured the complainant with the iron piping.

In my opinion, there was a *prima facie* case under section 326 of the Penal Code made out by the prosecution against the accused, and accordingly the Magistrate was bound to commit him for trial.

For these reasons I set aside the order of the Magistrate, and I direct him to draw up a charge under section 326 of the Penal Code against the accused and to commit him for trial thereon to the Court of a Judge.

Before parting with the case I think it right to say that the observations made by the Magistrate at the conclusion of the inquiry appear to show some confusion as to the duties of a Magistrate when holding an inquiry under Chapter XVII of the Criminal Procedure Code. When all the evidence has been taken, the Magistrate's duty simply is to inquire, has a *prima facie* case been made out against the accused by credible evidence? If the answer to this question is in the affirmative, then the Magistrate is bound to commit the accused for trial. On the other hand, if the answer is in the negative, the Magistrate is bound to discharge the accused, unless the evidence discloses an offence over which he has jurisdiction in which case he may either deal with it himself or order it to be tried by another Magistrate. It is no part of the inquiring Magistrate's duty to consider possible lines of defence to the charge which the accused may raise in the course of the inquiry or to decide whether there are sufficient grounds for *convicting* the accused. That is the function of the trial Court. Adopting the language of Batchelor J. in *In re Bai Parvati*[1], it is a safe rule that where the Magistrate entertains any real doubt as to the weight or quality of the evidence, the task of resolving the doubt and assessing the evidence should be left to the Court of a Judge.

*Order accordingly.*

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## JACKSON & CO. LTD. v. SENG SENG; JAGAT SINGH & CO. (Claimants)

[O. C. J. (Spenser Wilkinson J.) October 29, 1954]

[Penang — Civil Suit No. 60 of 1954]

*Bills of Sale Ordinance (Cap. 61), s. 6, Schedule A — Variation from form laid down — Interpretation and General Clauses Ordinance, 1948, s. 7 — Validity.*

Section 6 of the Bills of Sale Ordinance must be read subject to s. 7 of the Interpretation and General Clauses Ordinance so that slight deviations therefrom not affecting the substance or calculated to mislead shall not invalidate a bill of sale.

*Cases referred to:—*

(1) *Official Assignee v. Koh Kam Neo* (1898), 5 S.S.L.R. 70 at 75.

(2) *Aroonasallam Chetty v. Tay Heng Lee & Anor.* (1906), 10 S.S.L.R. 92.

(3) *Menatchy v. Trusty* (1895), 3 S.S.L.R. 12 at 18.

(4) *Hussain v. Chanda Singh* (1935) M.L.J. 262.

INTERPLEADER SUMMONS.

R. D. Hume for the claimants.

*F. G. Pooley* for the Execution creditors.

*Cur. Adv. Vult.*

The facts and arguments appear sufficiently from the judgment.

**Spenser Wilkinson J.** : —This is an Interpleader Summons involving the validity of a bill of sale, the sole question being whether certain minor variations from the form laid down render the bill of sale void under Section 6 of the Bills of Sale Ordinance which renders a bill of sale void "if it is not made in the form of Schedule A".

The actual variations in the bill of sale in question from the exact wording of the form laid down are as follows:—

(i) The date is given as "the 18th day of May in the year one thousand nine hundred and fifty three (1953)" whereas according to the form it should be "the day of , 19 ," so that the words indicating the year and the brackets round the 1953 might be said to be a variation;

(ii) The expression "motor cars" has been inserted in place of the word "chattels" in the form; and

(iii) The sum involved is written in the bill as "dollars twelve thousand and five hundred ($12,500)" instead of (as in the form) "twelve thousand and five hundred dollars".

With regard to the first and third alleged variations I cannot believe that any Court of justice would hold that a bill of sale was void for not being in the correct form if the only variations were the insertion of brackets round the date (which appears to me to be the only real variation in view of the blanks in the form); and because the amount was given as "dollars twelve thousand and five hundred" instead of "twelve thousand and five hundred dollars". All cheques in this country are written with the word "dollars" before the amount. In my opinion these so-called variations are covered by the maxim *de minimis non curat lex*. There remains, therefore, the question of the insertion of the specific expression "motor cars" instead of the prescribed word "chattels".

It has been held in the past in the Straits Settlements that the expression "in the form" which appears in our Ordinance is much stricter than the expression "in accordance with the form" which occurs in the English Acts, and there is authority for the proposition that under our Ordinance the form laid down must be followed *verbatim et literatim*. In the case of *Official Assignee v. Koh Kam Neo*[1] Leach J. in the Court of Appeal said that there had been no decision as to how far trivial errors might be overlooked when the words were "in the form". That case, however, was actually decided on the ground that the variation did in fact alter the legal effect of the document and was a variation both in form and in substance. In *Aroonasallam Chetty v. Tay Heng Lee & Anor.*[2] it was held that the use of the expression "Signed, Sealed and Delivered" instead of the prescribed form "Signed and Sealed" was a fatal variation. In an earlier case *Menatchy v. Trusty*[3], Collyer J. said:—

"Mere verbal differences as 'with interest' instead of 'and interest' I should not regard on the principle of *de minimis non curat lex*."

If these authorities are good law I should be left in doubt as to whether or not I could disregard the variation in the present bill of sale as covered by the maxim *de minimis non curat lex*. Since those cases were decided, however, the Interpretation and General Clauses Ordinance, 1948 has been passed and the question, therefore, arises whether Section 7 of that Ordinance has altered the law. That Section reads as follows:—

"7. Save as is otherwise expressly provided, whenever forms are prescribed slight deviations therefrom, not affecting the substance or calculated to mislead shall not invalidate them."

Prior to the passing of this Ordinance there was no similar provision in the Interpretation Ordinance of the Straits Settlements, but a very similar provision existed in the Interpretation and General Clauses Enactment, 1932 of the Federated Malay States. The only difference between Section 33 of that Enactment and Section 7 of the Ordinance above quoted is that in the Enactment the word "is" does not appear after the words "Save as" at the beginning of the Section.

In the case of *Hussain v. Chanda Singh*[4] Cussen J. considered the provisions of Section 6(b) of the Bills of Sale Enactment, 1922 which as far as I can ascertain was the same as Section 6(b) of the Bills of Sale Ordinance and also Section 33 of the Interpretation and General Clauses Enactment, 1932.

He held that in applying Section 6 of the Bills of Sale Enactment one must read with it Section 33 of the Interpretation and General Clauses Enactment.

Mr. Pooley has argued that the words "if it is not made in the form of Schedule A" amount to an express provision that even slight deviations should invalidate. Even apart from authority I should have been inclined to think that these words were no more than words prescribing a form and that as there is no additional express provision in Section 6 of the Bills of Sale Ordinance to the effect that even slight deviations shall invalidate Section 7 of the Interpretation and General Clauses Ordinance, 1948 would prevail, so as to save a bill of sale.

As, however, there is authority on the point I think it right to follow the decision of Cussen J. and to hold that Section 6 of the Bills of Sale Ordinance must now be read subject to Section 7 of the Interpretation and General Clauses Ordinance, 1948 so that slight deviations therefrom not affecting the substance or calculated to mislead shall not invalidate a bill of sale.

The variation in the present case not only does not affect the substance of the document and cannot be calculated to mislead but on the contrary is more precise than the form itself.

I hold, therefore, that the bill of sale in this case is not invalidated by reason of the variation.

*Order accordingly.*

Solicitors: *Hogan, Adams & Allan; Presgrave & Matthews.*

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## G. RAMCHAND v. LAM SOON CANNERY CO. LTD.

[C. A. (Murray-Aynsley C.J., Mathew C.J. (F.M.) and Whitton J.) October 4, 1954]

[Singapore — Civil Appeal No. 2 of 1954]

*Contract — Forward dealings in rubber — Whether gaming contract — Stranger to contract — Release — Novation.*